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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,854	12/30/2003	Janko Budzisch	6570P055	9420
45062	7590	12/09/2008	EXAMINER	
SAP/BSTZ			HAMZA, FARUK	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP			ART UNIT	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/749,854	BUDZISCH ET AL.	
	Examiner	Art Unit	
	FARUK HAMZA	2455	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 26 September 2008.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-8,10-18,20-28 and 30 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-8,10-18,20-28 and 30 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 9/26/08.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application

6) Other: _____.

Response to Amendment

1. This action is responsive to the amendment filed on September 26, 2008.

Claim 11 has been amended. Claims 1-8, 10-18, 20-28 and 30 are pending.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-8, 10-18, 20-28 and 30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 11 and 21 refer to "IS". It is not clear what "IS" stands for, making the cited claims indefinite.

All dependent claims are rejected as having the same deficiencies as the claims they depend from.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1-3, 11-13 and 21-23 are rejected under 35 U.S.C. 102(e) as being anticipated by the U.S Patent Application Publication No. 2004/0139194 A1 by Naganathan, hereinafter Naganathan.

Regarding claim 1, Naganathan teaches a method, comprising: repeatedly receiving request messages at a testing application running on a server or servlet engine ([0012] - users are regularly contacting the service), said repeatedly receiving occurring during execution of a testing scenario ([0013] - "dummy transactions" indicate testing, rather than "real life" transactions. [0044] - the transactions are synthetic), each of said request messages identifying the same set of software components that are: a) servable and/or invokable by said server or servlet engine ([0044] - modules are use loadable); b) associated with the same said testing scenario ([0044] - web service testing scenario or calendar service testing scenario); and, c) used by a same business logic process within an IS infrastructure ([0044] - web service testing scenario or calendar service testing scenario); and, said testing application, in response to each of said request messages in executing said testing scenario, performing the following: testing each of said one or more software components for availability ([0012] - availability testing) and preparing and sending onto a network a response message to report availability or unavailability for each of said one or more software components to an entity that sent said response message's corresponding request message ([0013] - users are informed of availability or unavailability of a service being tested), wherein, at least one of said software

components requires a login procedure for its availability test and each of said request messages include a userid for said login procedure ([0034] - user authentication).

Regarding claim 2, Naganathan teaches the method of claim 1 wherein at least one of said software components further comprises a web page and said testing for availability of said web page further comprises attempting to fetch said web page ([0044] and [0052]- web service. [0045] - support for HTTP protocol).

Regarding claim 3, Naganathan teaches the method of claim 2 wherein said web page's URL is identified in each of said request messages ([0045] - support for HTTP protocol).

Claims 11-13 are rejected in view of the above rejection of claims 1-3. Claims 11-13 are essentially the same as claims 1-3, except that they set forth the invention as a computer program product rather than a method, as do claims 1-3.

Claims 21-23 are rejected in view of the above rejection of claims 1-3. Claims 21-23 are essentially the same as claims 1-3, except that they set forth the invention as a system rather than a method, as do claims 1-3.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 4-8, 10, 14-18, 20, 24-28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naganathan in view of the U.S. Patent No. 6,842,891, issued to Zhang, hereinafter Zhang.

Regarding claim 4, Naganathan teaches the method of claim 1.

Naganathan does not explicitly teach that the method is further comprising creating a request object from the content of said request message with a request message class.

However, Zhang, in analogous art, directed to distributed test framework, teaches a method further comprising creating a request object from the content of said request message with a request message class (Abstract, 2:53-61 - dynamic attribute classes. 4:18-31 - implementation of the invention on Java platform. Java is an object oriented language. See also 4:32-38).

Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to combine the teachings of Zhang regarding implementation of the invention in Java with the teachings of Naganathan in order to enhance cross-platform compatibility of Naganathan's invention.

Naganathan, combined with the cited teachings of Zhang, is hereinafter referred to as NZ1.

Regarding claim 5, NZ1 teaches the method of claim 4 further comprising creating a scenario object from said request object with a scenario object class (Zhang, 4:18-31 - implementation of the invention on Java platform. Java is an object oriented language. See also 4:32-38).

Regarding claim 6, NZ1 teaches the method of claim 5 further comprising creating a response message object with a response message class (Zhang, 4:18-31 - implementation of the invention on Java platform. Java is an object oriented language. See also 4:32-38).

Regarding claim 10, NZ1 teaches the method of claim 1 wherein said testing of each of said one or more software components is performed by a servlet (Zhang, 5:28-37).

Regarding claim 7, Naganathan teaches the method of claim 1. Naganathan does not explicitly teach such method wherein said response message is an XML document.

However, Zhang, in analogous art, directed to distributed test framework, teaches a method wherein said response message is an XML document (7:50-59 - an Extensible Markup Language (XML) formatted messages).

Therefore, it would have been obvious to one of ordinary skills in the art at the time the invention was made to combine the teachings of Zhang regarding implementation of Extensible Markup Language (XML) formatted messages with the teachings of Naganathan in order to make the message format completely compatible with Java and completely portable. Naganathan, combined with the XML teachings of Zhang, is hereinafter referred to as NZ2.

Regarding claim 8, NZ2 teaches the method of claim 7 wherein each of said request messages is an XML document (7:50-59 - an Extensible Markup Language (XML) formatted messages).

Claims 14-18 and 20 are rejected in view of the above rejection of claims 4-8 and 10. Claims 14-18 and 20 are essentially the same as claims 4-8 and 10, except that they set forth the invention as a computer program product rather than a method, as do claims 4-8 and 10.

Claims 24-28 and 30 are rejected in view of the above rejection of claims 4-8 and 10. Claims 24-28 and 30 are essentially the same as claims 4-8 and 10, except that they set forth the invention as a system rather than a method, as do claims 4-8 and 10.

Response to Arguments

5. Applicant's arguments have been fully considered but they are not persuasive.

In the remarks applicant argues in substance that; A) Naganathan does not teach that *messages are repeatedly sent from the server layer to the agent layer.*

In response to A) Applicant's argument is inconsistent with claim limitations. This/These limitation(s) are not found in the claims. Claimed subject matter not the specification is the measure of the invention. Disclosure contained in the specification cannot be read into the claims for the purpose of avoiding prior art. *In re Sporck*, 55 CCPA 743, 386 F.2d 924, 155 USPQ 687 (1986); *In re Self*, 213 USPQ 1,5 (CCPA 1982); *In re Priest*, 199 USPQ 11, 15 (CCPA 1978).

B) Naganathan does not teach the presence of a userid within the *messages sent from the server layer to the agent layer.*

In response to B) Applicant's argument is inconsistent with claim limitations. This/These limitation(s) are not found in the claims. Claimed subject matter not the specification is the measure of the invention. Disclosure contained in the specification cannot be read into the claims for the purpose of avoiding prior art. *In re Sporck*, 55 CCPA 743, 386 F.2d 924, 155 USPQ 687 (1986); *In re Self*, 213 USPQ 1,5 (CCPA 1982); *In re Priest*, 199 USPQ 11, 15 (CCPA 1978).

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Faruk Hamza whose telephone number is 571-272-7969. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached at 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 886-217-9197 (toll -free).

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Application Number 	Application/Control No.	Applicant(s)/Patent under Reexamination
	10/749,854	BUDZISCH ET AL.
Examiner	Art Unit	
FARUK HAMZA	2455	